

Friday, March 18th

To the Kasson Township Planning Commission:

You should have a copy of my email correspondence with Mr. Cypher and Township Attorney Mr. Grier, but I am including it below. I am writing this note as a follow-up to the phone conversation that I had with both of them on Wednesday afternoon.

In my note and in our discussion I raised three points of concern where I felt that the staff recommendations were over-reaching beyond the intent or actual wording from the Planning Commission at the July 19, 2021 meeting. While we continued to disagree about those three points, I was pleased that we all agreed that those three areas of contention are for the Planning Commission to decide. Mr. Grier and Mr. Cypher are making recommendations, but the ordinance is clear that the Planning Commission has the final word. I wish to make our case that in those three areas, staff has extended beyond the intent or actual wording of the Planning Commission, and these additions are unnecessary over-regulation of our business.

First, I want to emphasize how upset we are that it took more than seven months to receive this letter, that has changed very little since the draft we all saw and you approved in July. It's been difficult enough to get a business started during a pandemic, and to learn and follow the Special Use Permitting process – but this delay was completely unnecessary and is making our planning for this seasonal business extra difficult. I should already have contracts for trees, fencing, and gravel, but have been uncertain about what the requirements would be until only this week. I hope you all understand the extra burden that this has placed on our new family business, and the additional frustration that places on my concerns about staff over-regulation.

I was particularly concerned by what I heard on Wednesday from Mr. Grier. Apparently he missed the memo from September when we rescinded our Phase 2 application for an indoor music event center, because he made it clear in our discussion that he continues to think that that is what we intend to do, and that it's his job to protect the township and nearby neighbors from us trying to sneak it past the Planning Commission. I found it offensive as an applicant and troubling as a taxpayer that he is spending so much of his time and township money to defend the township from a perceived threat, rather than just responding to our application. We are proposing a 40-site campground with a small retail farm market in our open-air pavilion. Yet the attorney has unnecessarily inserted language that he made clear is intended to prevent us from operating a music event center. We're not.

Point #1 requests removing an unnecessary prohibition on indoor amplified music. We are not approved – or applying – to use the indoor building in any way. So why add a statement prohibiting something that we're clearly not intending to do, and are already not allowed to do.

Point #2 requests removing an unnecessary prohibition on outdoor acoustic music anywhere on our property. We are not proposing any type of music activity, other than our three already

approved music events, so this prohibition assumes some devious intent on our part. There are considerable conditions and language clarifying that we are not to allow ANY noise to leave the campground within the SUP – that should be enough regulation.

Specifically prohibiting uses across our entire 19 acre parcel that we're not applying for is an unnecessary excessive violation of our property rights. It feels to me that your staff attorney is inappropriately bringing his personal grievances about music centers from another township into this application. I hope that Kasson Township will not be overly restrictive of uses that are not being requested, and instead consider each application and make appropriate conditions.

Point #3 is troubling for two reasons – first, the minutes clearly reflect that the Planning Commission tabled consideration of this entire issue until Phase 2 of our application, which has since been rescinded. So this language came entirely from staff, not you. Second, we are not applying for any of those uses – we have only repeatedly asked for clarification of what uses might be included as “Public or semi-public uses”. A request for clarification should NOT result in a prohibition of permitted uses. Again, it is an unnecessary overregulation.

As you should expect, we intend to improve our 4,000 sq. ft. building and return to the Planning Commission in due time with another application for more commercial activity within the building and elsewhere on the property. It will not be a music event center. But you will have all of your opportunities to review and make conditions to our application at that time. Please don't try to regulate our future activities before we even apply. That's what the ordinance and permitting process is for. We'll do our best to make an application that follows the ordinance.

We agree with nearly all of the conditions that apply to our campground that came from the Planning Commission. Regarding the two minor landscaping modifications, I believe that Mr. Cypher and I have found agreement. Mr. Cypher has been fair and helpful throughout this process, although much too slow. But I continue to strongly disagree with the three recommendations that have been added by staff and request that you not include them in our Final SUP Approval. Thank you for your consideration of this request.

Jim Lively, on behalf of Lively Holdings

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Re: Progress?

Jim Lively <jim@thelivelyfarm.com>

Tue, Mar 15, 7:58 AM
(3 days ago)

to Tim, Tom, grouch, KassonTwpPCSec

Hello Tim and Tom -

Thanks for sending along the draft Final Findings of Fact for my review. I must note that it seems unfair that I have less than 48 hours before our meeting to review and comment, while it took you more than seven months to complete this step. Nonetheless, I am including my comments below.

I have a process clarification, and a few points of difference in your recollection of the Planning Commission's approval following their July 19th review and discussion of these draft findings.

Process Point:

According to the zoning ordinance, only the Planning Commission is authorized to approve a Special Use Permit - not staff. So these are draft documents until signed by the Planning Commission chair and secretary.

At the last meeting of the Planning Commission, they asked us to meet to review the draft SUP Approval Letter and Findings of Fact and identify points of disagreement, and bring those points to the Planning Commission meeting on March 21st. We should expect that the PC will render a final decision on any points of disagreement at that meeting, at which point we will have a Final SUP Approval and Final Findings of Fact.

Points of Disagreement with Staff Interpretation of SUP Approval and Findings:

As you know, Lively Holdings was approved for Phase 1 of our project on July 19th, and we rescinded our Phase 2 proposal in September. However, many of the Findings for this approval drafted by staff were influenced by concerns about Phase 2 - which are no longer relevant. My observation is that staff added elements to both the Findings of Fact and SUP Approval Letter that were either not discussed by the Planning Commission, or are no longer relevant to our proposal as they were discussed by the Planning Commission in the context of the now-rescinded Phase 2.

Here are the areas where I believe the staff has exceeded their authority and added restrictions to our campground SUP that were not intended or discussed by the Planning Commission:

1) In the Findings of Fact conditions pursuant to Section 7.8 of the ordinance, condition number 10 describes a prohibition on outdoor amplified music (other than our three approved events) - but inappropriately has added "Indoor amplified music is also prohibited". Our campground SUP approval is ONLY for outdoor campground uses. We have removed any discussion of indoor uses as part of this approval - they were only relevant as part of Phase 2, which has been rescinded. The Planning Commission never discussed or raised any concerns or issues about indoor uses related to the campground expansion. So it is inappropriate and an over-reach by staff to include restrictions on any potential future indoor uses. **I request that this prohibition on indoor amplified music be removed.**

2) In the Findings of Fact, Condition 11 states "Acoustic music is also prohibited within the entirety of the Backyard Burdickville site, including the common areas as well as individual campsites. This prohibition will remain in effect until such time as the Township's sound engineer has conducted on site testing and review, and acoustic music will then only be allowed, if at all, under the conditions set forth by the Planning Commission at that time."

The Township's sound engineer is no longer engaged, as that was predicted to be part of our Phase 2 application. Without the Township conducting a sound test, this prohibition on outdoor acoustic music is overly strict and redundant. Our project should be governed by the same nuisance provisions as any other project in Kasson Township, as well as the "conditions set forth by the Planning Commission". Condition 8 states "Noise/sound levels within the campsites, at all times, shall be controlled so that persons do not disturb the public peace and quiet by shouting, whistling, loud, boisterous, or vulgar conduct, the playing of musical instruments, phonographs, radios, televisions, tape players or any other means of amplification at any time or place so as to unreasonably annoy or disturb the quiet, comfort and repose of persons in the vicinity."

And condition 9 states "The campsites shall otherwise not create a "nuisance defined by as an offensive, annoying, unpleasant, or obnoxious thing or practice or a cause or source of annoyance... including but not limited to: noise....; noise of a congregation of people, particularly at night".

Finally, Section 7.7 findings (page 3) explicitly state "Applicant also understands that if nuisance complaints are received and substantiated for any use onsite, Enforcement action could take place. Property owner will make every reasonable attempt to minimize and mitigate the impact. Property owner will adhere to all conditions provided herein placed by the Planning Commission."

The SUP Approval Letter also repeats this excessive statement that was not intended by the Planning Commission: "No combined- group acoustic music is allowed on the Property. This means acoustic music generated by a one or more musicians and intended for a collective audience including multiple

members of the public at large and/or multiple campers on common areas of the Property. This restriction does not prohibit the use of a single acoustic instrument, such as a guitar, within and for an individual campsite."

I believe the prohibition of acoustic music anywhere on our 19 acre property is redundant with other conditions, overly restrictive and was not intended by the Planning Commission. I recall the intent was to be temporary, to allow for a sound engineer to set a decibel standard. If the township wishes to enact a noise ordinance to govern appropriate decibel levels, we would abide by those restrictions. But without such an ordinance, we believe the intent of the Planning Commission was for our campground to abide by the nuisance ordinance. In fact, that is clearly stated elsewhere in these findings. **I request that this prohibition against all acoustic outdoor music be removed from both the Findings of Fact, and SUP Approval Letter.**

3) The SUP Approval Letter incorrectly states that "No public or semi-public events are permitted on the Property, other than the camping activity at the campsites." This was absolutely never considered by the Planning Commission, as is clear in the minutes of the July 19th meeting (page 7): "1. Definition of public and semi-public events as discussed with ZA – Planning commission members in agreement to table until Phase Two discussions begin." This is also recognized in the Findings of Fact related to Section 7.10 (page 7).

Section 4.9.1 of the Zoning Ordinance titled "Permitted Uses" is extremely clear that "Public and semi-public uses, including community meeting halls, parks and playgrounds" are permitted. Therefore, this prohibition included by staff in the SUP Approval Letter is not appropriate, as it was not discussed or intended to be included by the Planning Commission. **I am requesting that the statement about "Public or semi-public events" be removed from the SUP Approval Letter.**

Finally, I wish to discuss two minor differences to the landscaping provisions that I recall from the meeting with the Planning Commission:

Landscaping and trees

A. Parking / Roadways

The SUP Approval Letter requires that "four-foot deciduous shade trees with at least 1 1/2 inch caliper shall be placed around the parking area (one tree for every six (6) parking places)." While we intend to plant large deciduous trees around the parking area, I also recall clearly that we were authorized to use a solid fencing screen to block the parking area from M-72, which we also intend to do. **I request that a screen fence be added as an adequate landscaping around the gravel parking area.**

B. Trees at perimeter of site

The SUP Approval Letter requires "Deciduous or evergreen trees, at least three feet in height shall be placed along the west perimeter of the Property where there is a gap of more than 10 feet between existing trees. In the event that the existing trees located along the west perimeter of the property are lost, they shall be

replaced by deciduous or evergreen trees, at least three feet in height so that the gap is no more than 10 feet wide between trees."

However, the minutes from July 19th meeting clarify that the requirement for trees along the west perimeter do NOT need to be four foot trees, but instead can be planted as bare root seedlings from the conservation district. That's my recollection from the discussion, which is only reflected in the minutes as "small trees". However, they minutes clearly reflect small trees are distinct from the four-foot trees required to be planted around the parking areas: "Chair Otto confirmed with Cypher that the performance guarantee would be the gravel for parking areas, four foot trees around parking areas, and small trees for the voids in the perimeter."

I request that the SUP Approval Letter clarify that small (seedling) trees are adequate to be planted along the west side of the property - except for the gap in the existing mature trees, which will be planted with three-foot trees at 10 foot intervals.

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I hope that this letter helps us advance our discussion tomorrow toward agreement, or to clarify our points of disagreement for a final decision by the Planning Commission at their March 19th meeting. I look forward to talking with you both tomorrow.

- Jim Lively